

Rosenman

ROSENMAN & COLIN LLP
1300 19TH STREET, N.W.
WASHINGTON, D.C. 20036

TELEPHONE: (202) 463-4640
FACSIMILE: (202) 429-0046
WEB SITE: <http://www.rosenman.com>

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JUN 10 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

June 10, 1996

BY HAND

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

NEW YORK OFFICE
575 MADISON AVENUE
NEW YORK, NY 10022-2585

NEW JERSEY OFFICE
ONE GATEWAY CENTER
NEWARK, NJ 07102-5397

SPECIAL COUNSEL
JEROLD L. JACOBS

Re: MM Docket No. 94-155
FM Table of Allotments
Big Pine Key, Key Colony Beach,
Naples, and Tice, Florida

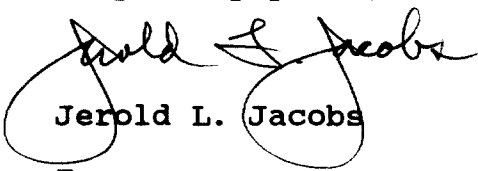
DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of Palm Beach Radio Broadcasting, Inc. and Gulf Communications Partnership, are an original and four (4) copies of their "JOINT COUNTERPROPOSAL REPLY COMMENTS" in the above-referenced proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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OFFICE OF SECRETARY**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 94-155
Table of Allotments,)	
FM Broadcast Stations)	
(Big Pine Key, Key Colony Beach,)	RM-8486
Naples, Tice, <u>Indiantown, Fort Myers</u>)	RM-8802
<u>Villas, Clewiston, and Jupiter, Florida</u>))	RM-8803

To: Chief, Allocations Branch

JOINT COUNTERPROPOSAL REPLY COMMENTS

Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W. Suite 200
Washington, D.C. 20036
(202) 463-4640

Attorneys for Palm Beach Radio
Broadcasting, Inc.

Howard M. Weiss

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400

Attorneys for Gulf Communications Partnership

Dated: June 10, 1996

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SUMMARY

Palm Beach Radio Broadcasting, Inc. ("Palm Beach") and Gulf Communications Partnership ("Gulf") are submitting Joint Counterproposal Reply Comments in support of the amendment and joint resolution of their counterproposals in this proceeding, which was achieved in their May 15, 1996 "Supplement to Joint Reply Comments".

Palm Beach and Gulf fully support the "amendment and joint resolution" upon which comment was solicited in the May 24, 1996 Public Notice. However, on June 10, 1996, Meridian Broadcasting, Inc. ("Meridian"), proposed assignee of Station WNOG, filed "Reply Comments," which state that "Meridian has no objection to operating Station WNOG-FM on Channel 292A and supports resolution of this proceeding in a manner that changes the WNOG-FM operating frequency to Channel 292A". Gulf welcomes Meridian's willingness to move to Channel 292A, because that allotment permits Gulf to upgrade from Channel 229A to Channel 229C2 (which it prefers), instead of to Channel 292C2. Therefore, assuming that the Commission grants Meridian's assignment application and that Meridian's desires in this proceeding will then supersede those of the present licensee, Palm Beach and Gulf urge the Commission to allot Channel 229C2 to WAAD and Channel 292A to WNOG in this proceeding.

In sum, the "amendment and joint resolution" in the Public Notice will permit five stations -- WPBZ, WROC, WAFC, WJBW, and WAAD -- to upgrade their facilities, including four upgrades from Class A to wide-area Class C2 or Class C3 service. Commission precedent clearly favors channel allotment resolutions which maximize the number of communities that will have upgraded facilities. Moreover, the five upgrades will result in the availability of upgraded radio service to at least an additional 1,229,204 persons in the State of Florida.

Grant of the "amendment and joint resolution" is fully consistent with Commission policy, case precedent, and the paramount public interest, and it should be adopted by the Commission. The issuance of a Report and Order on an expedited basis is respectfully requested.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF SECRETARY

In the Matter of)
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Amendment of Section 73.202(b),) MM Docket No. 94-155
Table of Allotments,)
FM Broadcast Stations)
(Big Pine Key, Key Colony Beach,) RM-8486
Naples, Tice, Indiantown, Fort Myers) RM-8802
Villas, Clewiston, and Jupiter,¹ Florida) RM-8803

To: Chief, Allocations Branch

JOINT COUNTERPROPOSAL REPLY COMMENTS

PALM BEACH RADIO BROADCASTING, INC. ("Palm Beach"), licensee of Station WPBZ(FM), Indiantown, Florida, and **GULF COMMUNICATIONS PARTNERSHIP** ("Gulf"), permittee of Station WAAD(FM), Tice, Florida, by their attorneys, pursuant to §1.415(d) of the Commission's Rules, hereby submit their Joint Counterproposal Reply Comments in support of the May 15, 1996 amendment and joint resolution of their counter-proposals (RM-8802 and RM-8803) in this proceeding. In support whereof, Palm Beach and Gulf show the following:

I. Background

1. The subject rulemaking proceeding was initiated by Notice of Proposed Rule Making and Order to Show Cause ("NPRM"), 10 FCC Rcd 24 (Mass Media Bur. 1994), following a petition for rulemaking filed by Gulf. Palm Beach's predecessor (Amaturo Group, Ltd.) and three other Florida broadcast entities -- WSUV, Inc., licensee of Station WJST(FM)

¹ The communities of Indiantown, Fort Myers Villas, Clewiston, and Jupiter, Florida have been added to the caption.

(formerly WROC),² Fort Myers Villas, Florida, GGG Broadcasting, Inc., licensee of Station WJBW(FM), Jupiter, Florida, and Glades Media Company, licensee of Station WAFC-FM, Clewiston, Florida -- teamed up as "Joint Petitioners" to file a two-alternative counterproposal (RM-8803) in this proceeding on February 17, 1995. On the same day, Gulf filed its own counterproposal (RM-8802) to its earlier petition for rulemaking.

2. By Public Notice (Report No. 2134, "Petitions for Rulemaking Filed")("Public Notice"), released May 24, 1996, the Commission noted (at page 2) that on May 15, 1996, Palm Beach and Gulf filed an "amendment and joint resolution to [their] counterproposals," and the Public Notice stated (*id.*) that it is on the "amendment and joint resolution" that the Commission is soliciting comment. That point is reiterated in capital letters on page 3 of the Public Notice, as follows: "REPLY COMMENTS TO THE AMENDMENT AND JOINT RESOLUTION TO THE COUNTERPROPOSALS SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS...AFTER THE DATE OF THIS PUBLIC NOTICE" (emphasis added). Palm Beach and Gulf fully support the "amendment and joint resolution" in the Public Notice, which is set forth on Page 3 below. As the Public Notice indicates, the parties amended and restated their original counterproposals in a jointly-filed May 15, 1996 "Supplement to Joint Reply Comments Mooting Sole Objection to Joint Resolution" ("Supplement"). Palm Beach and Gulf will now demonstrate that grant of the "amendment and joint resolution" to the Palm Beach and Gulf counterproposals is in the paramount public interest.

² For the convenience of the Commission, this station is called WROC in this pleading because that call sign was used to identify the station in Palm Beach's counterproposal and in the May 15, 1996 amendment and proposed joint resolution of this proceeding.

"Amendment and Joint Resolution"

<u>FL Community</u>	<u>Present Chan.</u>	<u>Proposed Chan.</u>	<u>Call Sign</u>
(1) Indiantown	276C2	276C1	WPBZ
(2) Naples	276C3	284C3	WSGL
(3) Big Pine Key	284C	281C1 ³	WWUS
(4) Key Colony Beach	280C2	267C2	WKKB
(5) Ft. Myers Villas	292A	275C2	WROC
(6) Clewiston	292A	258C3	WAFC
(7) Jupiter	258A	292C3	WJBW
(8) Tice	229A	292C2 ⁴ [229C2] ⁵	WAAD
[9] Naples	228A	292A	WNOG] ⁶

II. The "Amendment and Joint Resolution" Properly Replaces The Two Underlying Counterproposals

3. Originally, the Palmer Broadcast Group ("Palmer"), licensee of Station WNOG-FM, Naples, Florida, filed Comments and Reply Comments in this proceeding opposing the NPRM and Gulf's counterproposal, and Palmer urged the Commission to adopt either part of

³ The original "Joint Resolution" specified Channel 281C. In Paragraph 11 below, Palm Beach and Gulf explain why the Commission may now appropriately advance Channel 281C1 as the substitute channel for WWUS's Channel 284C.

⁴ The original "Joint Resolution" specified that, in accordance with Gulf's counterproposal, Channel 229C2 would be reallotted to Estero, instead of remaining in Tice, and WAAD's construction permit would be modified accordingly. However, as explained in Paragraph 4 below, Gulf has withdrawn the Estero part of its original counterproposal and is no longer interested in constructing that channel in that community. Thus, Gulf's upgrade proposal would normally revert to what was originally proposed in the NPRM -- substituting Channel 229C2 for Channel 229A at Tice. However, as explained in Paragraph 7 below, a previous objection is mooted if Channel 292C2 (instead of Channel 229C2) is substituted for Channel 229A at Tice. Therefore, the Supplement proposed that minor modification of the "Joint Resolution".

⁵ See Paragraph 8 below for a discussion of "Reply Comments" filed by Meridian Broadcasting, Inc., proposed assignee of Station WNOG-FM, Naples, Florida.

⁶ See Paragraph 8 below for a discussion of "Reply Comments" filed by Meridian Broadcasting, Inc., proposed assignee of Station WNOG-FM, Naples, Florida.

Palm Beach's counterproposal, which would not require Palmer to change channels. In an attempt to harmonize the allotments proposed in the NPRM and the Joint Petitioners' and Gulf's counterproposals, resolve Palmer's objections, and permit five stations to provide wide area service to at least an additional 1,229,204 persons,⁷ the Joint Petitioners and Gulf proposed a "Joint Resolution" in their March 6, 1995 "Joint Reply Comments" in this proceeding. Palm Beach and Gulf will not repeat here the precise allotments proposed in the Joint Reply Comments because their Supplement amends the Joint Reply Comments as described in Paragraph 2 above (the "amendment and joint resolution") to moot the sole objection (by Palmer) to grant of the original "Joint Resolution".

4. In Paragraph 7 of the Joint Reply Comments, the Joint Petitioners and Gulf requested that their "Joint Resolution" hybrid counterproposal be placed on public notice in lieu of their original counterproposals. The parties urged that this was in the paramount public interest since such a streamlined Public Notice would avoid "protracted litigation over mutually exclusive counterproposals, conserving the Commission's resources by avoiding the need to perform a comparative analysis of mutually exclusive proposals". Id. at ¶8. In the Supplement, Palm Beach and Gulf again requested that the "Joint Resolution" -- as restated therein -- alone should be placed on public notice as a "global solution" to the mutually exclusive allotment proposals in this proceeding.

5. Procedurally, Palm Beach and Gulf submit that the manner in which the Public Notice focuses comment on the "amendment and joint resolution" is fully justified by the parties' withdrawal of those parts of their counterproposals that are incompatible with the "Joint

⁷ See March 6, 1995 Joint Reply Comments at page 2.

Resolution". The Joint Petitioners and Gulf withdrew their incompatible allotment proposals for Estero and Palm River, Florida in their Joint Reply Comments (at ¶10) and reiterated that withdrawal in the Supplement.⁸ Hence, any claim that non-parties should still be allowed -- at this late date --to express interest in frequencies at Estero and Palm River, should be rejected out of hand. It is clear that the time for expressions of interest in this proceeding ended in February 1995 when rulemaking comments and counterproposals were due. Moreover, the Public Notice directs commenters' attention only to the "amendment and joint resolution," and no one can demand the right to comment on a counterproposal which, as here, the proponents have withdrawn.

6. Put differently, when expressions of interest in a frequency are late-filed, it is well established that the Commission will not accept them. See FM Table of Allotments (Santa Isabel PR), 3 FCC Rcd 2336 (1988)("Santa Isabel"), recon. denied, 4 FCC Rcd 3412 (1989), aff'd sub nom. Amor Family Broadcasting v. FCC, 918 F.2d 960 (D.C. Cir. 1990). Late-filed expressions of interest in a frequency are considered "only in a situation where there is no opposition to the channel proposals and where there would be no adverse impact on another pending proposal". See FM Table of Allotments (Hazlehurst and Bude MS), 10 FCC Rcd 2164, 2164 n.3 (Mass Media Bur. 1995)(emphasis added), citing FM Table of Allotments (Santa Isabel PR), supra. Thus, since the Joint Petitioners and Gulf have withdrawn their interests in Palm River and Estero, and since those proposals are incompatible with the "Joint Resolution," Palm River and Estero are properly excluded from further consideration in this proceeding.

⁸ Neither the Joint Petitioners nor Gulf any longer sponsors or is interested in pursuing their previous proposals to build FM stations in Palm River and Estero, respectively.

7. Of special note, the "Joint Resolution" -- as restated in the Supplement and the Public Notice -- contains a minor modification of Gulf's proposed upgrade frequency -- the substitution of Channel 292C2 at Tice, Florida for Channel 229C2 -- which allows Channel 228A at Naples to remain unchanged. This modification became technically possible only in the last few weeks as a result of Commission rulemaking actions in MM Docket Nos. 89-455 and 92-125. The Tice modification is very important because it resolves the only objection filed against any of the rulemaking proposals or counterproposals in this proceeding. Specifically, as demonstrated in the Supplement, if Channel 292C2 is allotted to Tice, Palmer's Station WNOG can remain on Channel 228A at Naples. Under these circumstances, Palmer's previous objections have become moot, and, as stated in the Supplement (at page 3), Palmer does not object to grant of the "Joint Resolution" as restated in the Supplement, which is the "amendment and joint resolution" upon which the Commission has solicited comment in the Public Notice.

8. However, on June 10, 1996, Meridian Broadcasting, Inc. ("Meridian"), proposed assignee of Station WNOG, filed "Reply Comments" in this proceeding, which undersigned counsel received by mail before completing this pleading. Meridian states (at page 1) that "Meridian has no objection to operating Station WNOG-FM on Channel 292A and supports resolution of this proceeding in a manner that changes the WNOG-FM operating frequency to Channel 292A". Gulf welcomes Meridian's willingness to move to Channel 292A, because that allotment permits Gulf to upgrade from Channel 229A to Channel 229C2 (which it prefers), instead of to Channel 292C2. (As explained in the Supplement, Gulf agreed to change its upgrade frequency to Channel 292C2, instead of Channel 229C2, solely to accommodate Palmer's desire to remain on Channel 228A, instead of moving to Channel 292A as proposed in the "Joint Resolution".) Therefore, assuming that the Commission grants Meridian's

assignment application and that Meridian's wishes in this proceeding supersede Palmer's, Palm Beach and Gulf urge the Commission to allot Channel 229C2 to WAAD and Channel 292A to WNOG in this proceeding.

9. In sum, it is well established that the "Commission may allot an alternate channel in order to resolve conflicts between proposals". See FM Table of Allotments (Salem and New Martinsville, WV), DA 95-2391 n.4 (Mass Media Bur. 1995), citing Pinewood, SC, 5 FCC Rcd 7609 (1990). Similarly, the Commission has held that "it is appropriate to suggest in reply comments alternate channels for communities at issue in a proceeding". See FM Table of Allotments (Corpus Christi and Three Rivers TX), 11 FCC Rcd 517 ¶5 (Mass Media Bur. 1996). Thus, since the "amendment and joint resolution" in the Public Notice represents an agreed-to "global solution" which resolves existing allotment conflicts, the Commission has properly made it the sole focus of comment at this late phase of the proceeding, rather than waiting until it issues a Report and Order to announce how it proposes to resolve those conflicts. (This rationale also supports changing WNOG's allotment, as discussed in Paragraph 8 above, especially since an allotment change for WNOG was proposed in the NPRM.)

III. The "Amendment and Joint Resolution" Fully Complies With the Columbus, Nebraska "Two Substitution" Policy

10. On its face, the "amendment and joint resolution" in the Public Notice appears to require eight (8) channel substitutions. However, five of the proposed substitutions involve the Joint Petitioners and Gulf -- nos. (1), (5), (6), (7), and (8). In addition, by letter dated October 19, 1995, addressed to the Chief, Allocations Branch, Mass Media Bureau, Crain Communications, Inc. ("Crain"), licensee of Station WWUS(FM), Big Pine Key, Florida, advised the Commission that Station WWUS does not oppose the substitution of Channel 281C1

for Channel 284C (substitution no. (3)). Thus, only two of the eight substitution proposals are non-consensual: nos. (2) and (4).⁹ Hence, the "amendment and joint resolution" is fully consistent with the Columbus, Nebraska "two substitution" policy, 59 RR 2d 1184 (1986), especially since it is the result of two rulemaking petitions -- filed by Gulf and by the Joint Petitioners. It is well established that the Columbus, Nebraska policy allows two non-consensual channel substitutions per petition. See FM Table of Allotments (Boalsburg, et al. PA), 6 FCC Rcd 4296, 4299 ¶14 and n. 11 (Mass Media Bur. 1991)(by implication); FM Table of Allotments (Rock Valley and Sibley, IA et al.), 5 FCC Rcd 6444 ¶2 (Mass Media Bur. 1990)(rulemaking commenced where neither of two rulemaking proposals in same proceeding required more than two existing stations to change channels), aff'd, 6 FCC Rcd 5867 (Mass Media Bur. 1991).

IV. Consents by Stations Which May Need To Change Transmitter Sites Have Been Obtained

11. The Joint Petitioners' counterproposal included letters of consent by Key Chain, Inc. ("Key Chain"), licensee of Station WKRY(FM), Key West, Florida, and Schefflera, Inc., licensee of Station WJBX(FM), Fort Myers Beach, Florida, to change transmitter sites if necessary to carry out the Joint Petitioners' frequency change proposals. Schefflera, Inc.'s consent remains in force. However, Key Chain withdrew its consent by a September 15, 1995 pleading entitled "Withdrawal of Consent of Key Chain, Inc."

12. In its November 13, 1995 "Comment" on Key Chain's action, Palm Beach explained that implementation of the "Joint Resolution" no longer requires Key Chain's consent.

⁹ Similarly, as discussed in Paragraph 8 above, the proposed assignee of Station WNOG does not oppose the substitution of Channel 292A for Channel 228A at Naples (substitution no. (9)).

The reason is that when the Joint Petitioners originally sought Key Chain's consent to change transmitter sites, it appeared that Crain's Station WWUS would have to be protected as a full Class C station in this proceeding. However, by pleadings filed on October 19, 1995, Crain asked the Commission to dismiss its challenge to the Bureau's January 11, 1995 Letter Order downgrading WWUS to Channel 284C1. The Bureau granted Crain's dismissal request by letter dated October 27, 1995. Under these circumstances, it is now unnecessary for the parties to propose substituting Channel 281C for WWUS's previous Channel 284C in this proceeding. Rather, the parties (and the Commission) may properly propose that Channel 281C₁ be substituted for Channel 284C₁ at Big Pine Key. As the FM spacing studies already submitted in this proceeding indicate, moving Station WWUS to Channel 281C₁ (as opposed to Channel 281C) does not require Station WKRY to change transmitter sites. Hence, since it is no longer necessary to change Key Chain's site, Key Chain's withdrawal of consent has no decisional significance.

**V. Suitable Allocations Reference Sites
Exist for the WROC Upgrade**

13. The Public Notice (at page 3) specifies the coordinates 26-29-06 and 82-00-36 (the "old coordinates") as the allocations reference site coordinates for the proposed upgrade of Station WROC to Channel 275C2 at Fort Myers Villas. However, those are not the reference coordinates specified for WROC in the "Joint Resolution" section of the Joint Reply Comments, upon which the Supplement and the Public Notice are based. Rather, the coordinates 26-29-20 and 82-00-42 (the "condo site coordinates") are specified for WROC in the Joint Reply Comments (at Exhibit 7-B).

14. Palm Beach and Gulf note that the "old coordinates" in the Public Notice were the ones proposed for WROC's upgrade in a prior related FM channel rulemaking proceeding - MM Docket No. 93-136 (Clewiston FL et al.). There, the Commission held in Memorandum Opinion and Order, 10 FCC Rcd 6548, 6550 ¶10 (Mass Media Bur. 1995), that those coordinates were not acceptable because the reference site "lies in the water". However, Palm Beach, WSUV, Inc., and GGG Broadcasting, Inc., filed a still-pending "Application for Review,"¹⁰ which challenged that site determination on the grounds that the coordinates were adopted by the Commission, placed in the Commission's engineering data base (where they remain to this day), and "grandfathered" in Report and Order in MM Docket No. 87-169 (Franklin Park, Punta Gorda, and Punta Rassa FL), 2 FCC Rcd 7437 (Mass Media Bur. 1987), and that several possible alternative locations exist for a tower site for WROC in Punta Rassa, Florida.

15. Under the circumstances, Palm Beach and Gulf do not know whether the Commission has decided in the Public Notice to accept Palm Beach's Docket 93-136 argument that the "old coordinates" for Punta Rassa are grandfathered and viable for an allotment decision, or whether the "old coordinates" were listed in the Public Notice by error. In the event that the Commission continues to believe that the "old coordinates" are not acceptable for a WROC reference site, Palm Beach and Gulf urge that the "condo site coordinates" -- upon which the Joint Petitioners and Gulf intended to rely in this proceeding -- represent a viable alternative allotment reference site for WROC in the Punta Rassa area. It is well established that, in allotment proceedings, it is sufficient to specify a "theoretical site which meets the

¹⁰ On May 21, 1996, the parties filed a pleading withdrawing their Application for Review, but the Commission has not yet acted on that request.

Commission's various technical rules" for frequency allotment purposes. See West Palm Beach, Florida, 6 FCC Rcd 6975, 6976 (Mass Media Bur. 1991). More rigorous site assurance requirements pertain only to the Form 301 application phase of establishing station facilities. Palm Beach and Gulf believe that the "condo site coordinates" fully satisfy the Commission's allotment site specification requirement.

16. Nevertheless, out of abundance of caution, Palm Beach and Gulf have asked Communications Technologies, Inc. ("CTI"), a consulting engineering firm, to conduct a fresh analysis of alternative reference sites in the Punta Rassa area. Attached hereto is an Engineering Statement by Mr. Clarence M. Beverage of CTI, in which he concludes (at pages 2-3) that the available reference site area in Punta Rassa is much larger than was discussed in the Docket 93-136 proceeding (see Paragraph 14 above) and contains a number of buildings and towers having suitable site elevation for a Channel 275C2 facility. Moreover, illustrative of those conclusions, the Engineering Statement specifies (at page 2, Figures 1 and 2, and Table I) an alternate set of coordinates located northeast of the "condo site coordinates" to more fully describe the available site area for the proposed WROC upgrade. The coordinates are 26-29-26 and 81-59-49 ("new coordinates"), which, Palm Beach and Gulf maintain, fully meet the Commission's requirements for allotment reference coordinates in this proceeding. Palm Beach and Gulf are confident that one or more of the specified Punta Rassa reference sites identified in this Section can be used by the Commission as reference site coordinates for the WROC upgrade. Alternatively, CTI

has demonstrated that other theoretical Punta Rassa reference sites are available.¹¹

VI. The "Amendment and Joint Resolution" Fully Complies With the Circleville, Ohio Reimbursement Policy

17. The Joint Petitioners and Gulf have previously stated that they will reimburse all stations that are required to change frequency in this proceeding for their reasonable expenses related thereto under the Circleville, Ohio frequency change reimbursement policy (8 FCC 2d 159 (1967)). Palm Beach and Gulf reaffirm that commitment.¹²

VII. Conclusion

18. The "amendment and joint resolution" in the Public Notice will permit five stations -- WPBZ, WROC, WAFC, WJBW, and WAAD -- to upgrade their facilities, including four upgrades from Class A to wide-area Class C2 or Class C3 service. Commission precedent clearly favors channel allotment resolutions which maximize the number of communities that will have upgraded facilities. See Archilla-Marcocci Spanish Radio Co., 101 FCC 2d 522 (Rev. Bd. 1985), rev. denied, FCC 86-271 (Comm'n May 30, 1986)(§307(b) of the Communications Act is better served by granting proposals to serve three communities instead of one). Moreover, the five upgrades will result in the availability of upgraded radio service to at least an additional 1,229,204 persons in the State of Florida. In sum, grant of the "amendment and joint resolution" is fully consistent with Commission policy, case precedent, and the paramount public

¹¹ Noting the contentiousness of the Punta Rassa reference site question in Docket 93-136, Mr. Beverage also concludes in his Engineering Statement (at page 4 and Table II) that, if the Commission allots Channel 275C₃ to Fort Myers Villas for Station WROC, instead of Channel 275C₂, all reference site questions are mooted, and WSUV, Inc. may later use the Commission's "one-step" application process to upgrade WROC's facilities to Class C2.


¹² This commitment includes reimbursing Station WNOG if the Commission substitutes Channel 292A for its present Channel 228A. See Paragraph 8 above.

interest, and it should be adopted by the Commission, consistent with Paragraph 8 above. Moreover, given the fact that this proceeding has been pending for more than two years (Gulf filed its petition for rulemaking on March 31, 1994), the issuance of a Report and Order on an expedited basis is respectfully requested.

WHEREFORE, in view of the foregoing, Palm Beach and Gulf respectfully ask the Commission to amend the FM Table of Allotments and modify the licenses of the affected stations as described in Paragraphs 2 and 8 above.

Respectfully submitted,

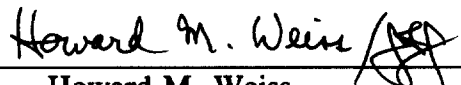
PALMBEACH RADIO BROADCASTING, INC.

By 
Howard J. Braun
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 - 19th Street, N.W. Suite 200
Washington, D.C. 20036
(202) 463-4640

Its Attorneys

GULF COMMUNICATIONS PARTNERSHIP

By 
Howard M. Weiss

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400

Its Attorneys

Dated: June 10, 1996

ENGINEERING STATEMENT
IN SUPPORT OF JOINT COUNTERPROPOSAL REPLY COMMENTS
MM DOCKET NO. 94-155
AMENDMENT OF SECTION 73.202(b), TABLE OF ALLOTMENTS
FM BROADCAST STATION (BIG PINE KEY, KEY
COLONY BEACH, NAPLES, TICE, INDIANTOWN,
FORT MYERS VILLAS, AND JUPITER, FLORIDA)

JUNE 1996

**ENGINEERING STATEMENT
IN SUPPORT OF JOINT COUNTERPROPOSAL REPLY COMMENTS
MM DOCKET NO. 94-155
AMENDMENT OF SECTION 73.202(b), TABLE OF ALLOTMENTS
FM BROADCAST STATION (BIG PINE KEY, KEY
COLONY BEACH, NAPLES, TICE, INDIANTOWN,
FORT MYERS VILLAS, AND JUPITER, FLORIDA)**

JUNE 1996

SUMMARY

The following engineering statement has been prepared on behalf of **Palm Beach Broadcasting, Inc.** ("**Palm Beach**"), licensee of WPBZ(FM) Indiantown, Florida, and **Gulf Communications Partnership** ("**Gulf**"), permittee of WAAD(FM), Tice, Florida. The purpose of this statement is to address the allotment coordinates which should be associated with the proposed upgrade of WROC to Channel 275C2 at Fort Meyers Villas, Florida.

SITE COORDINATES - CH 275C2 FORT MYERS VILLAS, FLORIDA

In its May 24, 1996 Public Notice announcing the counterproposals, an "amendment and joint resolution" in this Docket, the Commission specified coordinates for Channel 275C2 at Fort Myers Villas, Florida at N.L. 26-29-06, W.L. 82-00-36. These coordinates are old coordinates and not those specified in the Joint Reply Comments in this proceeding. The coordinates specified in the "Joint Resolution" are N.L. 26-29-20, W.L. 82-00-42. These coordinates are believed to be those of a condominium site located in Punta Rassa.

Based on a review of the record in this proceeding and further analysis within this statement, it is believed that the condominium coordinates are appropriate for this allotment. However, the site area for Channel 275C2 is actually quite large and **Palm Beach** and **Gulf** wish to more fully apprise the Commission of this fact.

At this time, **Palm Beach** and **Gulf** wish to specify an alternate set of coordinates located NE of the condo coordinates to more fully describe the available site area. These coordinates are:

N.L. 26° 29' 26"
W.L. 81° 59' 49"

Figure 1, attached, depicts the condo coordinates (#1) and the new proposed reference coordinates (#2). Table I, attached, demonstrates that the proposed new coordinates meet the FCC distance separation requirements found in *Section 73.207* of the Rules.

Figure 2 is a map depicting the U.S. Census designated boundary for Fort Myers Villas with geographic coordinates for points along the boundary noted at the bottom of the map. Distance from the proposed reference coordinates to the most distant point of the Fort Myers Villas corporate boundary is 16.92 km at a bearing of 56.4°. An ERP of 50 kW and an HAAT of 38 meters (antenna radiation center 125 feet above ground) would place the 70 dBu contour over 100% of the community based on the newly proposed reference coordinates.

AVAILABLE SITE AREA

Figure 3 is a map showing the *Section 73.207* site area (area not rounded up to the nearest 0.5 km) for Channel 275C2 with the old coordinates for reference. The site area includes Punta Rassa as well as a multi square mile area on Sanibel Island to the southwest. The area on Sanibel Island is clearly developed by virtue of the significant road system depicted on the map. The fact that one set of coordinates associated with the Channel 275C2 allotment for Fort Myers Villas, N.L. 26° 26' 00", W.L. 82° 05' 00", were located on Sanibel Island, and possibly in an environmentally sensitive area, has no bearing concerning use of the remaining site area.

In regard to Punta Rassa itself, a May 23, 1994 declaration by Technical Consultant, Jerry Bellairs, which was filed in the related MM Docket 93-136, Clewiston, Florida Rulemaking proceeding, is summarized as follows:

1. On April 28, 1994, several 10-13 floor condos were observed in the community along with a high rise hotel.
2. Several buildings in Punta Rassa have plainly visible antennas on their roofs.
3. A building with antennas on its roof was chosen, at its assumed existing height, and the 70 dBu contour over all of Fort Myers Villas confirmed.
4. Bellairs concluded by stating, "There are a number of fully-spaced 'suitable' allocation reference sites at Punta Rassa."

Figure 1 depicts the newly proposed reference site (the practical most northly coordinates) and the condo coordinates known to the Commission. The two sets of coordinates are separated by almost a mile. Located midway between the two sets of reference coordinates are the approximate site locations of two FCC licensees:

KIZ742 Sea Tow Services of Lee County
FCC database records reflect a 187 foot tower in use by Sea Tow

KD39073 Liberty Sanibell II
FCC licensee of VHF radio frequencies

Additional FCC licensees exist at other locations on Punta Rassa.

Based on the facts that, 1) the predicted 70 dBu contour can cover the entire community of Fort Myers Villas with a radiation center as low as 38 meters (125 feet) above ground from the proposed reference site shown on page 2 of this statement, 2) there are buildings and towers on Punta Rassa having suitable elevation, 3) the site area on Punta Rassa is quite large in which to locate a site, it is believed that use of allotment coordinates on Punta Rassa are fully justified. Moreover, the available site area, as discussed previously, also includes a significant land area on Sanibel Island. With all of these factors considered, it is anticipated that the Commission will look favorably on the proposed allotment of Channel 275C2 to Fort Myers Villas, Florida.

CHANNEL 275C3 - FORT MYERS VILLAS, FLORIDA

Table II, attached, is an allotment study for Channel 275C3 at Fort Myers Villas using the U.S. Atlas reference coordinates for Fort Myers Villas of:

N.L. 26° 33' 54"

W.L. 81° 52' 18"

Palm Beach and **Gulf** wish to bring to the Commission's attention the fact that Channel 275C3 can be allocated to Fort Myers Villas in accordance with *Section 73.207* distance separation standards at the community reference coordinates. This would allow WROC to upgrade to Channel 275C3, or to Channel 275C2, using the "one-step" application process.

CONCLUSION

Based on the data herein, it is believed that there is ample proof of a suitable site for Channel 275C2 for allotment purposes at Fort Myers Villas, Florida.


The foregoing was prepared on behalf of **Palm Beach Broadcasting, Inc.** and **Gulf Communications Partnership** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By 

Clarence M. Beverage
for Communications Technologies, Inc.
Marlton, New Jersey

SUBSCRIBED AND SWORN TO before me,

this 7th day of June, 1996,



NOTARY PUBLIC

ESTHER G. SPERBECK
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT 15, 1997

TABLE I
SUGGESTED ALLOTMENT COORDINATES
CHANNEL 275C2 102.9 mHz
FORT MYERS VILLAS, FLORIDA

JUNE 1996

Search of channel 275C2 (102.9 MHz), at N. 26 29 26, W. 81 59 49.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Sarasota	FL	273	C	U	104.7	105.0	346.1°	-0.3
WHPT	Sarasota	FL	273	C	L	104.7	105.0	346.1°	-0.3
ALC	Pompano Beach	FL	274	C	U	187.8	188.0	108.0°	-0.2
WMXJ	Pompano Beach	FL	274	C	L	187.8	188.0	108.0°	-0.2
WROC	Fort Myers Villas	FL	275	C2	A	1.5	190.0	262.8°	-188.5
WROC	Fort Myers Villas	FL	275	C2	A	10.7	190.0	233.7°	-179.3
WROCFM	Fort Myers Villas	FL	275	C2	A	10.7	190.0	233.7°	-179.3
ALC	Naples	FL	276	C3	U	57.9	117.0	151.9°	-59.1 ¹
WPBZ	Indiantown	FL	276	C1	A	193.4	158.0	75.1°	35.4
WPBZ	Indiantown	FL	276	C1	A	193.4	158.0	75.1°	35.4
WSGL	Naples	FL	276	C3	D	48.9	117.0	145.7°	-68.1
WSGL	Naples	FL	276	C3	L	48.9	117.0	145.7°	-68.1

¹ To Channel 276C3

TABLE II
SUGGESTED ALLOTMENT COORDINATES
CHANNEL 275C3 102.9 mHz
FORT MYERS VILLAS, FLORIDA

JUNE 1996

Search of channel 275C3 (102.9 MHz), at N. 26 33 54, W. 81 52 18.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Sarasota	FL	273	C	U	100.7	96.0	338.1°	4.7
WHPT	Sarasota	FL	273	C	L	100.7	96.0	338.1°	4.7
ALC	Pompano Beach	FL	274	C	U	178.8	176.0	111.8°	2.8
WMXJ	Pompano Beach	FL	274	C	L	178.8	176.0	111.8°	2.8
WROC	Fort Myers Villas	FL	275	C2	A	16.3	177.0	238.9°	-160.7
WROC	Fort Myers Villas	FL	275	C2	A	25.6	177.0	235.3°	-151.4
WROCFM	Fort Myers Villas	FL	275	C2	A	25.6	177.0	235.3°	-151.4
ALC	Naples	FL	276	C3	U	61.2	99.0	166.0°	-37.8 ¹
WPBZ	Indiantown	FL	276	C1	A	179.3	144.0	76.6°	35.3
WPBZ	Indiantown	FL	276	C1	A	179.3	144.0	76.6°	35.3
WSGL	Naples	FL	276	C3	D	50.9	99.0	162.9°	-48.1 ¹
WSGL	Naples	FL	276	C3	L	50.9	99.0	162.9°	-48.1 ¹

¹ To Channel 276C3